



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
DOMINION HILLS AREA RECREATION ASSOCIATION,  
INCORPORATED  
FOR  
DOMINION HILLS RECREATION AREA  
Unpermitted Discharge**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Dominion Hills Area Recreation Association, Incorporated (Dominion Hills, Inc.), regarding the Dominion Hills Recreation Area (Dominion Hills), for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Contractor" means the contracting company Jeff Allen Enterprises, Inc., a corporation in Virginia. Jeff Allen Enterprises, Inc.'s registration with the SCC was terminated on 1/31/2015.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "DES" means the Arlington County Department of Environmental Services, a county government department in Arlington County, Virginia.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "Dominion Hills" means the Facility/Source.
10. "Dominion Hills, Inc." means the Responsible Party/Facility Owner: Dominion Hills Area Recreation Association, Incorporated, a nonstock nonprofit corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Dominion Hills Area Recreation Association, Incorporated is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Facility" means the Dominion Hills Recreation Area located at 6000 Wilson Blvd, Arlington, Virginia, operated by the business corporation named Dominion Hills Area Recreation Association, Incorporated.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

15. "PCB" means Polychlorinated Biphenyl, a banned organic chemical pollutant that persists in the environment and in fish tissues.
16. "pH" means potential hydrogen, and is a chemical test used to measure acidity (< 7 pH) or alkalinity (> 7 pH) of a substance. A pH of 7 is neutral.
17. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
18. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
19. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
22. "TMDL" means Total Maximum Daily Loads, or the assessed amount of pollutants an impaired body of water can handle without resulting in further impairment.
23. "UT" means an unnamed tributary (to a larger and named body of water).
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means Virginia Pollutant Discharge Elimination System.

27. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Dominion Hills Area Recreation Association, Incorporated (Dominion Hills, Inc.) owns and operates the Facility (Dominion Hills). The facility does not have a stormwater or discharge permit.
2. The receiving unnamed tributary (UT) has neither been monitored nor assessed. There are downstream impairments. Four Mile Run, approximately 0.25 miles away from the Facility, is located in the Potomac River Basin. Four Mile Run is listed in DEQ’s 305(b) report as impaired for recreational use because of bacterial impairment (based on *E. coli* monitoring), and has an associated TMDL. A TMDL for PCBs is also completed for the tidal Potomac River watershed, though Four Mile Run itself was considered fully supported for fish consumption in 2005.
3. Arlington County DES and Virginia DEQ staffs were notified of a potential pollutant discharge event at Four Mile Run on April 12, 2018. During the site visit DEQ, supported by DES staff, made the following observations:
  - a. Foam and suds were observed discharging into Four Mile Run from an outfall near the Bluemont Park baseball fields at 601 N Manchester St, Arlington, VA on the morning of 4/12/18. Dead fish, dead salamanders, and dead worms were found near the outfall and further downstream.
  - b. Pool cleaning and draining had been ongoing that same day at the Dominion Hills Facility, by contractors from Jeff Allen Enterprises, Inc.
  - c. A drum of muriatic (hydrochloric) acid was observed adjacent to the pool.
  - d. Photos taken by DES staff indicated drainage discharge of chemical-laden pool water behind the pool facility, over approximately 50 yards of grass, and into an open channel.
  - e. The open-channel unnamed tributary (UT) becomes piped, and discharges into Four Mile Run. Dead worms were observed at the inlet of the channel.
  - f. The UT was measured to be acidic (pH 5.15-5.87) and had elevated levels of specific conductivity (294-1045 µs/cm).
  - g. The pH above the UT/Four Mile Run confluence was measured to be higher (pH 8.28-8.51) than downstream of it (pH 6.75).
  - h. Stream banks at the outfall pipe were wet, indicating a recent 1-2” rise and subsequent fall of water level.
  - i. Eleven dead salamanders were found near the effluent of the UT outfall.
  - j. Within ½ mile downstream of the confluence of the UT and Four Mile Run, DEQ staff counted 4,700 dead Blacknose Dace and 43 dead Bluegill.
  - k. No macroinvertebrates were observed under any substrate in the stream, and almost all substrate was covered in algae.

4. NRO Pollution-Response staff denoted their evaluation and response in IR # 2018-N-2530.
5. Based upon observations noted during the April 12, 2018 incident, a Notice of Violation (NOV# W2018-04-N-002) for the unpermitted discharge resulting in a fish kill was issued to Dominion Hills, Inc. on May 8, 2018.
6. Dominion Hills, Inc. responded to the Notice of Violation by meeting with NRO enforcement staff to discuss the compliance and enforcement proceedings on June 7, 2018.
7. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
8. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
9. The Department has issued no permits or certificates to Dominion Hills Area Recreation Association, Incorporated.
10. The Four Mile Run UT and Four Mile Run itself are a surface waters located wholly within the Commonwealth and are “state waters” under State Water Control Law.
11. Based on the results of April 12, 2018 inspection and the June 7, 2018 meeting, the Board concludes that Dominion Hills Area Recreation Association, Incorporated has violated Va. Code §62.1-44.5 and 9 VAC 25-31-50, by discharging noxious and deleterious wastes from the Facility as described in paragraph C(3), above.
12. In order for Dominion Hills, Inc. to complete and maintain compliance, DEQ staff and representatives of Dominion Hills, Inc. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Dominion Hills Area Recreation Association, Incorporated, and Dominion Hills Area Recreation Association, Incorporated agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a **civil charge of \$10,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order;

Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to:

1. the **"Treasurer of Virginia"** for the civil charge (one check);

and delivered to:

**Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218**

Dominion Hills Area Recreation Association, Incorporated shall include its Federal Employer Identification Number (FEIN) with the payments and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Dominion Hills Area Recreation Association, Incorporated for good cause shown by Dominion Hills Area Recreation Association, Incorporated, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Dominion Hills Area Recreation Association, Incorporated admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Dominion Hills Area Recreation Association, Incorporated consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dominion Hills Area Recreation Association, Incorporated declares it has received fair and due process under the Administrative Process Act and the State Water Control Law

and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Dominion Hills Area Recreation Association, Incorporated to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dominion Hills Area Recreation Association, Incorporated shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dominion Hills Area Recreation Association, Incorporated shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dominion Hills Area Recreation Association, Incorporated shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Dominion Hills Area Recreation Association, Incorporated.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Dominion Hills Area Recreation Association, Incorporated has completed all of the requirements of the Order;
  - b. Dominion Hills Area Recreation Association, Incorporated petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dominion Hills Area Recreation Association, Incorporated.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dominion Hills Area Recreation Association, Incorporated from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. Any plans, reports, schedules or specifications attached hereto or submitted by Dominion Hills Area Recreation Association, Incorporated and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Dominion Hills Area Recreation Association, Incorporated certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Dominion Hills Area Recreation Association, Incorporated to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dominion Hills Area Recreation Association, Incorporated.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Dominion Hills Area Recreation Association, Incorporated voluntarily agrees to the issuance of this Order.



Consent Order

Dominion Hills Area Recreation Association, Incorporated; Unpermitted Discharge

Page 9 of 11

And it is so ORDERED this 13 day of March, <sup>2019</sup>~~2018~~.



**Thomas A. Faha**, Northern Regional Director  
Department of Environmental Quality

Dominion Hills Area Recreation Association, Incorporated voluntarily agrees to the issuance of this Order.

Date: December 22, 2018 By: [Signature], President  
(Person) (Title)

Dominion Hills Area Recreation Association, Incorporated  
Scott H. Christensen

Commonwealth of Virginia

City/County of Arlington

The foregoing document was signed and acknowledged before me this 22 day of

December, 2018, by Scott H. Christensen who is

President of Dominion Hills Area Recreation Association,  
Incorporated, on behalf of the corporation.

[Signature]  
Notary Public

#7724615  
Registration No.

My commission expires: July 31, 2021

Notary seal:

TATIANA J. GARCIA-BUTTS  
NOTARY PUBLIC  
REGISTRATION # 7724615  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES  
JULY 31, 2021

## **APPENDIX A SCHEDULE OF COMPLIANCE**

Dominion Hills Area Recreation Association, Incorporated shall:

1. Submit to DEQ a revised pool-emptying/cleaning best-management-practices (BMP) guideline and testing-checklist for the company and sub-contractors to follow during future pool cleanings, which addresses prevention and response to unpermitted discharges of pool waters (incl. high chlorine and acidic discharges). Submission to DEQ for review shall occur within 60 days of the signature of this Order.

### **DEQ Contact**

Unless otherwise specified in this Order, Dominion Hills, Inc. shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
ATTN: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193

(703) 583-3812  
Benjamin.Holland@DEQ.VIRGINIA.GOV